plied, thus involving an increase of those who get knowledge of the writing, the principle which the court applies must remain the same. This possibility suggests the cases which have refused to extend this privilege when the manner of sending involved too wide publication, as sending by postal card, *Robinson* v. *Jones*, 4 L. R. Ir. 391; or by telegram, *Williamson* v. *Freer*, L. R. 9 C. P. 393. The decisions in both cases were influenced by the necessity for care in extending the sphere of publication. In the case of *Boxsins* v. *Goblet Frères*, [1894] 1 Q. B. 842, a communication was held to be privileged where the publication was to copying clerks in the office of the defendant, a solicitor, in view that copying letters was necessary and usual in the business. But that may be distinguished from the present case, for here the clerks were not in the defendant's employ either at his place of business or elsewhere. Moreover, it seems difficult to justify what the defendant here did as necessary and usual in the business. It is true that the local custom was shown, but even that cannot alter the fact that many whose interest in the matter was extremely small got knowledge of the objectionable writing. There is at the same time no hardship on the defendant in refusing this justification, for he may still avail himself of custom as far as the real necessity of the case demands. Hence one may well disagree with the opinion in holding this a privileged communication.

Reservations and Exceptions in a Deed. — The law in this country on the reservation of easements in deeds of land is much confused and still remains in doubt. As the conveyances here are almost always by deeds poll and not by indenture, the English doctrine of a grant back of the easement strictly would not apply. Our courts have usually surmounted this difficulty by calling the reservation an "exception," appearing to consider the grantor's title as a bundle of rights, and that one of these — the easement in question — was retained by the grantor. An easement, however, has always been regarded by the common law as something newly created by the parties and entirely different from any of an owner's rights over his property. Accordingly a more consistent doctrine would be secured if, instead of trying to bring the reservation of an easement under the head of an exception from the grant, the courts recognized that the prevailing custom can only be supported on the ground of long usage.

The authorities on this subject are elaborately discussed in *Smith et al.* v. *Furbish*, 44 Atl. Rep. 398 (N. H.). In 1865, A, the plaintiff's ancestor, conveyed to B a tract of land along the bank of a river, reserving the right of building a dam across the river at any point and the right of flowage caused by the dam. The defendant contended that as there were no words of limitation in the reservation A only reserved a life estate in the easement. The court gave judgment for the plaintiff, holding that these reservations must be construed as exceptions, and hence words of limitation were unnecessary. If the easement is to be construed as an exception there would seem to be no necessity for words of limitation, — the grantor retaining part of his old estate, it is in him of the old right unless the contrary appear in the deed. The courts, while apparently agreeing with the principal case on this point, are not unanimous as to what shall be called an exception. Though the view of the principal case that all reservations may be construed as exceptions in order to give

effect to the intention of the parties appears to be prevailing, yet the later Massachusetts cases hold that for the easement reserved to be construed as an exception it must have been used by the grantor before the grant. *Claflin* v. *Boston & Albany R. R.*, 157 Mass. 489. Why such usage should affect the subject is difficult to comprehend. The principal case would in Massachusetts therefore have to be supported on the theory of an implied grant, and, there being no words of limitation, the grantor would be held to have had only a life estate in the easement, and the plaintiff, his heir, would have accordingly failed.

THE PROTECTION OF COPLEY SQUARE. — The Supreme Court of Massachusetts in upholding the constitutionality of a statute which limited the height of buildings bordering on Copley Square would seem to have reached a just conclusion. Copley Square is a public square or park surrounded by a notable group of structures of a public or quasi-public nature. The statute in question prohibited the erection of buildings to a height of over ninety feet on the streets adjoining the square. At the time of the passage of the act the defendants were in the course of erecting a high apartment house on a corner which abutted on the square. Subsequently they built beyond the prescribed height, and to an action by the attorney general set up the defence that the statute was unconstitutional. It was held that the statute, which created an easement over adjoining property in favor of a public park, tended to promote the beauty of the park and to prevent unreasonable encroachments upon the light and air previously enjoyed; hence it came within the power of eminent domain. *Attorney General* v. *Williams*, 55 N. E. Rep. 77 (Mass.).

The court said that this statute might well have been passed in the exercise of the police power, but the fact that it provided compensation for property owners damaged thereby seemed to show that the legislature intended it to come under the power of eminent domain, the taking of rights in property for the use of the public and compensating the owner of such property for his injury. The decision seems correct whichever ground be taken. The right to impose reasonable restrictions for the benefit of the neighborhood as to the nature and use of buildings in a city is unquestionably within the police or regulating power. *Watertown* v. *Mayo*, 109 Mass. 315; *Talbot* v. *Hudson*, 16 Gray, 417. So under the right of eminent domain it is settled law that the legislature may take land in a city for a public park and expend public money upon its improvement. *Shoemaker* v. *U. S.*, 147 U. S. 282; *Foster* v. *Commissioners*, 133 Mass. 321. The creating of an easement over land adjoining a park is of an entirely similar nature. Whether the decision be rested upon the one ground or the other depends mainly upon the point of view that is taken. Yet the provision for compensation to the property holder damaged does not conclusively show that the statute was based on the right of eminent domain. As in the exercise of the police power the legislature may, if it sees fit, provide compensation, and justly. On the whole, it would seem better to class it under the police power, the right of regulating or restraining the use of one's property so that it shall not be injurious to the equal enjoyment of others. *Commonwealth* v. *Alger*, 7 Cush. 53. For the object of the statute is rather the regulation of an individual's use of his property than the appropriation of such property for a public use.